BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

PATRICIA LEE)
Claimant)
VS.)
) Docket No. 1,004,417
NATIONAL BEEF PACKING COMPANY)
Respondent)
AND)
)
LIBERTY MUTUAL INSURANCE)
Insurance Carrier)

ORDER

Respondent appeals the September 26, 2002 Nunc Pro Tunc Order For Medical Treatment of Administrative Law Judge Pamela J. Fuller. Claimant was awarded benefits in the form of medical treatment with J. E. Harrington, D.O., as the authorized treating physician.

Issues

Respondent raises the following issues for Board consideration:

- "(1) The administrative law judge made no findings to support the order for medical treatment.
- "(2) The record reveals the claimant did not provide notice of any accidental injury, which is alleged to have occurred in mid-April 2002, within ten days of the alleged accident."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant alleges accidental injury to her low back beginning in mid-April 2002 and continuing each and every working day thereafter. Respondent contends claimant has

failed to prove that she provided notice of accident within ten days as required by K.S.A. 44-520.

Claimant's testimony is that she talked to both the nurse in the dispensary and to respondent's assistant safety director, Jeannie Hall. While both Ms. Hall and Susan Williams, respondent's registered nurse, deny these allegations, it is apparent from the Order that the Administrative Law Judge concluded claimant's testimony was the more persuasive and credible. The Board, in assessing the credibility of witnesses, generally defers to an administrative law judge's decision in that regard. In this instance, claimant's testimony was sufficiently credible to convince the Administrative Law Judge to award the benefits requested. The Board affirms that finding.

Additionally, the first issue raised by respondent is not one over which the Board takes jurisdiction from a preliminary hearing under K.S.A. 44-534a or K.S.A. 2001 Supp. 44-551, and is, therefore, dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Nunc Pro Tunc Order For Medical Treatment of Administrative Law Judge Pamela J. Fuller dated September 26, 2002, should be, and is hereby, affirmed.

IT	IS	SO	OR	RDEI	RED.

	Dated this	day of November 2002
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BOARD MEMBER

c: Lawrence M. Gurney, Attorney for Claimant Terry J. Malone, Attorney for Respondent Pamela J. Fuller, Administrative Law Judge Director, Division of Workers Compensation